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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 227

GREAT SOUTHERN TRUCKING COMPANY, A
CORPORATION,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FOURTH CIRCUIT AND BRIEF IN SUP-
PORT THEREOF.**

THOMAS C. GUTHRIE,
F. GRAINER PIERCE,
WHITEFORD S. BLAKENEY,
Counsel for Petitioner.

MILAM, McILVAINE & MILAN,
Of Counsel.

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PETITION FOR WRIT OF CERTIORARI.

The petitioner respectfully presents to the Court:

1. That the petitioner is a Florida corporation and is a common carrier engaged in the business of hauling general commodities by motor truck in several southeastern states, including North Carolina.

2. That the principal matter in controversy in this action is whether the petitioner shall be required to take back into its employ, and pay back wages to, some thirty-nine former employees in North Carolina whom the petitioner discharged in September, 1939; that the petitioner discharged said employees for the reason that they had gone on strike and were refusing to work, the petitioner,

after the commencement of such strike, having hired other persons to fill the places of the striking employees.

3. That the respondent does not deny that the petitioner had the right thus to replace and discharge such striking employees and that the petitioner can not now be required to discharge the new employees in order to make room for the former employees—provided the strike and refusal to work on the part of the old employees was not caused by any unfair labor practice on the part of the petitioner; that it is thus conceded on all sides that the basic issue in this case is whether any unfair labor practice on the part of the petitioner caused the strike on the part of the employees referred to above.

4. That after a detailed hearing of the case, the respondent's Trial Examiner found and reported that the said strike was not caused by any unfair labor practice on the part of the petitioner; that the respondent thereafter reversed its Trial Examiner and held that unfair labor practices on the part of the petitioner did cause the aforesaid strike and that the petitioner must, therefore, reinstate with back pay the employees in question and must, if necessary to effectuate such end, discharge those who had taken the places of the striking employees; that thereafter, upon appeal by the petitioner to the United States Circuit Court of Appeals for the Fourth Circuit, such ruling on the part of the respondent was affirmed and ordered enforced.

5. That the petitioner will not contend that there is no evidence in the record of unfair labor practice on its part within the meaning of the National Labor Relations Act (Section 151 et seq. of Title 29, U. S. C. A.), but the petitioner does earnestly contend that there is no evidence in the record that the strike among its employees in Sep-

tember, 1939 was caused by any unfair labor practice and that, on the other hand, the record unequivocally establishes that said strike resulted from a cause which did not constitute an unfair labor practice and that the ruling of the respondent to the contrary as affirmed by the Circuit Court of Appeals is a forced conclusion in direct conflict with stipulations freely entered into by the respondent during the hearing of this case, all as is more particularly set forth in a brief hereto attached.

6. That by reason of the provisions of Section 347 of Title 28, U. S. C. A., this Court has jurisdiction to review this cause and the proceedings had herein; that as the petitioner respectfully submits, the Court should exercise its discretion to grant the prayer of this petition, for the reason that the proper decision of the issue here involved is important in the administration of the National Labor Relations Act and in the determination of future proceedings under that Act, and for the reason that the order of the respondent herein as sustained by the decree of the Circuit Court of Appeals deprives the petitioner of its property without due process of law and thereby violates the provisions of the Fifth Amendment to the Constitution of the United States.

WHEREFORE, the petitioner respectfully prays the Court for a writ of certiorari directed to the United States Circuit Court of Appeals for the Fourth Circuit and commanding that Court to certify and send to this Court a transcript of the record and of all proceedings in this cause, to the end that the case may be reviewed and determined by this Court as is by law provided; and the petitioner prays that it may have such other and further relief or remedy as to the Court may seem just and proper.

GUTHRIE, PIERCE & BLAKENEY,
MILAM, McILVAINE & MILAM,
Attorneys for Petitioner.

NORTH CAROLINA,

Mecklenburg County:

Emory Morris, being duly sworn, deposes and says that he is Assistant Superintendent of the Carolinas Division of Great Southern Trucking Company, petitioner above named, and that as such, he is duly authorized and qualified to make this verification, that he knows the contents of the foregoing petition and that the same is true to his own knowledge, except as to the matters therein stated upon information and belief, and as to these, he believes it to be true.

EMORY MORRIS.

Subscribed and sworn to before me, this the 5 day of June, 1942.

ALICE C. MOORE,
Notary Public.

[SEAL.]

My Commission Expires: April 18, 1944.